

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 5941 of 1999
with
SPECIAL CIVIL APPLICATION No 2981 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SATYA PAL ANAND Versus STATE OF GUJARAT

Appearance: 1. Special Civil Application No. 5941 of 1999
PARTY-IN-PERSON for Petitioner
Mr.A.D. Oza, G.P. for the Respondents.
2. Special Civil Application No 2981 of 1998
Mr.N.D Nanavati as Amicus Curiae.
Mr.A.D. Oza, G.P., for the respondents.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2000

C.A.V. JUDGEMENT: (Per P.B. Majmudar, J.)

1. It will be an ideal state wherein the percentage of literacy at primary level is one hundred percent and nobody would talk in terms of percentage so far as literacy rate is concerned. Both these Public Interest Petitions have been filed with an object to see that the percentage of literacy at grass-root level in the State achieves this noble object of increasing the rate of percentage as much as possible.

2. Special Civil Application No.5941 of 1999 has been filed by one Satya Pal Anand of Indore, Madhya Pradesh, who is a Life Member of the Indian Law Institute, New Delhi, and who is interested in education,

having felt constrained about drop of percentage of education at the primary level.

It seems that the present petitioner had filed writ petition before the Supreme Court of India, being Writ Petition (C) No.81 of 1994. The Honourable Supreme Court pointed out in its order, which is at page 78 with the compilation, that the States and Union Territories have gone ahead towards implementation of the Supreme Court's order in Unnikrishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645, upholding the fundamental right of any child below 14 years of age to be obtaining education at State expense. While disposing of the aforesaid writ petition, the Supreme Court has observed as under :-

"... What has been achieved upto now is commendable. What remains to be done is individual resting with each State or Union Territory. We therefore, would not like to monitor any further the progress of these proceedings and rather close them leaving open to any public-spirited person to move the concerned High Court if there be any need on the part of the State towards implementation of the dictate of Unnikrishnan's case. Writ petition is disposed of accordingly "

Petitioner Satya Pal Anand has thereafter moved this Court by way of the aforesaid Special Civil Application No.5941 of 1999.

3. So far as Special Civil Application No.2981 of 1998 is concerned, the same has been filed by one Swami Akshay Vivek, who has submitted his representation to the Honourable Chief Justice on the basis of newspaper report, which is regarding filling up of the vacant posts at the primary level and that representation is now converted into suo motu writ petition, being Special Civil Application No.2981 of 1998.

We have heard both the Special Civil Applications together. On behalf of the respondents, Mr.A.D.Oza, Government Pleader, has remained present. The parties-in-person and other Advocates have not remained present.

4. As pointed out in the petition, the State Government has not enforced the punitive clauses by

making elementary education compulsory for all the children of the age group of 6-14 and most of the unenrolled children belong to poor and migrant families. It is also pointed out in the petition that the State Government, because of financial constraint, is not in a position to provide appropriate facilities to the pre-primary students and the students, who have migrated from other States.

5. It is the duty of the State Government to make all the efforts to see that practically each and every child upto the tender age of 14 is provided with all facilities to see that he can get the education so that no child remains without benefit of literacy. For that purpose, what is required to be done by the State Government is to see that free education should be made available at the primary level, facilities of good teachers, good books and all the facilities which are required, should be made available. In the matter of education, financial burden can never be the subject matter and financial burden or constraint can never be put as a defence in not implementing the education programme at primary level. In spite of various efforts made by the State Government, if there is still drop out percentage, there is need for self-introspection at the hands of the concerned authorities.

6. In paragraph 6(b) of the petition, the petitioner has pointed out the percentage of literacy in Gujarat State. The question that has been posed by the petitioner in paragraph 6 of the petition is that there are many schools recognized by the State Government which are imparting education to children, both under the age of 14 years and over that age. Whether such children under the age of 14 years are liable to pay any school fees? Whether the private primary schools are subject to the discipline and control of the State and whether the State has chosen to provide free and compulsory education for all children upto the age of 14 years either in the Government school or partly through its recognized schools which are either aided or unaided? The petitioner has also stated in the petition that those children, who could not get their education upto the age of 14 years should also be compensated by the State Government. The petitioner has also pointed out in paragraph 20 of the petition that in spite of the Supreme Court judgment, there are about 15000 children who are employed as child workers in Surat District alone in diamond cutting industry. With this noble object, the petitioner Satya Pal Anand has filed aforesaid Special Civil Application No.5941 of 1999. The petitioner has

prayed for various ad interim reliefs such as making available free and compulsory education of equal quality to the child upto the age of 14 years, increasing the strength of the teacher, implementing and enforcing the punitive clauses regarding compulsory education, making primary education compulsory for the children between 6 and 14 years and making such education absolutely free. It is also prayed that text books, note books, pens, pencils, school dresses etc. should be made available freely, that the fees charged by the private unaided schools should be subjected to control by the State so that such schools may not become education selling shops. In the light of the judgment of the Supreme Court, the State should provide Village Education Committee in all districts and that the State should also see that there should be elimination of discrimination between rural children and urban children and between female children and male children in the matter of providing free and compulsory education.

7. The petitioner has also made other prayers by way of final prayers such as providing free and compulsory education regarding each and every child by appointing Inspectors to keep the birth record of each child throughout Gujarat and to see that such students are enrolled for education and also to see that the drop out rate is minimized.

8. As stated earlier, this petition has been filed with the noble object to see that there should be compulsory education at primary level and the child between the age of 6 and 14 years should be subjected to compulsory education. Because of poverty in the rural areas, even at the threshold of their lives, the child of tender age is forced to serve either by way of labour work or even in some private restaurants or even as domestic servants. It is a matter of great regret that at such tender age, instead of getting education, such child is compelled to earn his livelihood. If such child is subjected to proper education, he may even turn out to be a scholar, but, because of the circumstances, he is denied the aforesaid opportunity.

It is a sad commentary on the State Administration that in a Welfare State, young children of impressionable age, instead of attending classes and playing with other children of their age, are forced to rummage garbage dumps for a morsel of left overs, to do odd jobs in hotels / restaurants, as domestic servants, etc. These children are not knowing about childhood. At a tender age, they are so-called adults, putting in hard

work to augment the meagre income of their families. Actually, this amounts to human right violation of these children. Education is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. We hope that the State will put in more effort to see that at least in the new millennium, the barest minimum by way of providing good education compulsorily and other extra-curricular activities so as to enable them to become enlightened citizens of this country conforming to the mandate of Article 21 of the Constitution of India.

It would, therefore, be the duty and pious obligation of the State to see that no child between 6 and 14 years is left out from getting the benefit of education. Poverty and financial constraint of any individual should not result into illiteracy of child of such person and, therefore, naturally, the Government is required to make all attempts to see that there should be one hundred percent literacy so far as child between the age group of 6 and 14 is concerned and even thereafter also, the percentage of literacy should not fall, but at least, at this stage, if proper care is taken, then the percentage of literacy even at higher education can also be maintained. It should be the endeavour of the State Government in the new millennium to see that no child is left out without education. Necessary enforcement is required for maintaining the aforesaid object. Not only that, unless some strict measures are taken by making education compulsory, it will not be possible for the Government to achieve the aforesaid object. We, therefore, appreciate the move on the part of the petitioners in bringing these petitions. We are sure that unless such strict provisions are made, making primary education compulsory with the consequences of penal clause, the Government may not be able to secure education for all children at primary level.

9. In response to the aforesaid Special Civil Application as well as in response to another petition, i.e. Special Civil Application No.2981 of 1998, which is filed by one Swami Akshay Vivek, which is mainly regarding filling up of all the vacant posts of primary teachers, a joint affidavit has been filed by the State Government, through its Additional Secretary, Education Department, Shri A.A. Nagori.

10. Earlier, this Court had directed the Government to provide information regarding steps taken by the Government regarding reducing drop out rates of students

at the primary education level and regarding appointment of Committee at the State level to improve quality of primary education in the State and role of Village Education Committee at village level. It has been pointed out by Shri Nagori, Additional Secretary, Education Department, in his reply that the Government has taken steps to full enrolment of eligible children and "Praveshotsav" is organized in every village in the State in Standard I. It has been pointed out that the aforesaid "Praveshotsav" was organized with the cooperation of the Village Education Committees in which eminent educationalists, leaders, social workers and officers attended and participated. It is stated that there is target to enrol 16 lac eligible children and they are likely to be enrolled by 31st August, 2000. It is pointed out that in the year 1998-'99, 14,50,253 children were enrolled by way of "Praveshotsav" and in the year 1999-2000, 15,90,836 children are enrolled under the same. It is also pointed out that about 39000 teachers have been recruited under the scheme of "Vidya Sahayaks" and over and above, approximately, 9800 school rooms are constructed and 5400 class rooms are under construction. It is further stated that under the "Operation Blackboard" scheme for schools, Government had provided various scientific maps, charts, music instruments, libraries, sports equipments, etc., amounting to Rs.50,000/- per school. The G.R. regarding "Operation Blackboard" Scheme is produced at page 91, along with the reply. The same is dated 25th May, 2000. Under the said scheme, the equipments which are required to be purchased by the primary schools are mentioned. The items are like tables, school blackboards, harmonium, carom set, cricket set, ceiling fan, instrument for laboratory, etc.

11. G.R. regarding establishing Rural Education Committee is also produced at page 97. It has been pointed out in paragraph 5 of the reply that with the result of all-side efforts made by the Government, the drop out rate has considerably decreased and data of last three years is annexed as Annexure 'B'. It is also pointed out in the reply at paragraph 6 that to improve the quality of education in the States, there are national level organizations like NCERT (National Council of Educational Research and Training), NCTE (National Council of Teacher Education), GCERT (Gujarat Council of Educational Research and Training) and such other programmes as mentioned in the said paragraph. Some literature is also produced before the Court regarding the various programmes, of which we will make reference at a later point of time. It is pointed out that there

are 19 District Institutes of Education Training at District level, and most qualified Principals and 342 lecturers, having Ph.D., M.A., M.Sc., M.Com. and M.Ed. are involved in quality improvement of education at State and District level. It is pointed out that the Education Department has organized its qualitative educational wing as part of its duty. It is also pointed out that GCERT, State level Council, is an independent Body and it is issuing publications, like "Jivan Shikshan", and "Vigyan Parichaya", to each school in Gujarat to give feed back to school teachers. It is pointed out that the Government has not left the work of educational quality improvement on Village Education Committees, but it is left with local body of villagers headed by Sarpanch, Headmaster and teachers to bring public participation and public awareness towards schools and local problems at local level. It is pointed that the Educational Department has worked out a plan for coming decade, i.e. "Vision 2010". It is pointed out that whatever actions are taken by the State Government in the last two years will be reflected in the next few years. It is pointed out that the Government has made sincere efforts in the field of education and still, will be going ahead according to plans, with the public participation and with good budget.

12. It is no doubt true that in view of the literature produced as well as averments made in the reply that the State is also concerned to improve the quality and improve the literacy level at the primary education level. To substantiate their say in the reply, certain literature has been produced before this Court, one of which is a booklet regarding District Primary Education Programme at Panchmahal - Dahod. There is a table given at page 7 of that booklet, wherein number of classes at various levels have been mentioned with the number of students and teachers. Details regarding the number of classes in Panchmahal District is also mentioned at page 6. Enrolment status of 1997, 1998, 1999 and 2000-2001 is also produced. Various other details have also been given in the said booklet. Minutes of the First Meeting of State Level Advisory Committee of District Centre for English (Centrally Sponsored Scheme) is also produced, wherein the details of various steps taken to strengthen the standard of education are given. The book in the heading of "Balshrushti" is also produced before this Court, wherein there are articles in Gujarati language about places of interest. Literature regarding other subjects like Science etc. is also produced on record. Literature regarding Gujarat Council of Educational Research and

Training is also produced on record, which we have gone through.

13. At this stage, we are not referring to the entire literature produced before us, because there is a big bunch of it, but suffice it to say that attempts have been made by the State Government in improving the quality of primary education and such attempt is also made even in rural and backward areas. There is some literature submitted even on the subject of Computer by District Education and Training Centre, Santrampur. Therefore, attempts have been made and such attempts are going to improve the quality of education at grass-root level. From the material produced before the Court, we are satisfied that the State is taking care to see that the quality of primary education can be improved as much as possible. However, we are sure that the State Government will continue to monitor the aforesaid programmes in an effective manner because unless there is a proper monitoring, sometimes such programmes are found to be doing well in the initial stages, but thereafter, such programmes lose the enthusiasm. However, we are more concerned with the percentage of literacy at such primary level. As pointed out by us earlier, attempt should be made to see that no child is left out from the benefit of education and no child between the age group of 6 and 14 should be left out from the benefit of education. For that purpose, Government should make all attempts to see that education should be made compulsory at primary level and whatever strict implementation for this is required, the Government may consider enacting proper laws in order to achieve the aforesaid object. For the aforesaid object, even appropriate advertisement, and for making the people aware about the same in this aspect, proper publicity may be given. If necessary, some incentive scheme, in the nature of midday meal scheme, can be evolved by the Government in a better manner. This aspect also requires some examination in detail by the Government. We are sure that the Government will try its best to see that full literacy is achieved at the primary education level. Care should be taken to increase the percentage of both male and female students for the purpose of primary education. Even door to door survey in this behalf may be conducted and even as suggested by the petitioner in his petition, from Birth Register, data can be collected and, thereafter, proper implementation in this behalf should be undertaken by the Government. We appreciate the efforts undertaken by the State Government, especially by its Education Department in this behalf, and we are sure that the same will be continued with the same spirit. We trust and

hope that regarding achieving literacy standard at the primary level to its fullest extent, the people who are in charge of the same will do the needful and for that purpose, as stated earlier, financial constraint can never be any handicap for achieving such a noble object. So far as children of tender age, who are sometimes doing labour work, or doing the work of domestic servants, such children are deprived of education. We are sure that the State Government will conduct appropriate study on this aspect and the Government should try to eradicate such child labour totally and the Government should make an attempt to see that such child also, who is subjected to labour work, is restored to education immediately. At the threshold of life, if a child is compelled to do labour work or even service by way of employment, he can never get the benefit of education and he will be deprived of the opportunity of turning out to be an educated and literate citizen. No child should be deprived of the benefit of education only because of financial constraint or poverty. The State should make all endeavours to see that no child, instead of being in class room, should be at other places of employment and bothering for livelihood at some tender age. We hope and trust that what is required to be done in this regard also will be done by the State Government.

14. So far as appointing teachers at the primary level is concerned, in the affidavit-in-reply, it has been stated about Balguru Scheme, etc. We are, therefore, satisfied that in the matter of recruitment, the State is taking appropriate steps and the Court is not required to say anything on this aspect than the one which is already stated and explained by the State Government. The observations made in this judgment, therefore, may be seriously taken into consideration by the State Government and for the purpose of achieving appropriate percentage of literacy at the primary level, the Government should do all the needful.

15. We appreciate the efforts made by the Education Department and the programmes it has undertaken of which we have mentioned earlier. What is done is remarkable. What is required to be done is still a Herculean task. We are sure that all efforts will be made to see that education will not remain as a matter of percentage as there will be cent percent literacy in the State. It would be an ideal state where the percentage of literacy is cent percent and one would dream to have such a situation. All efforts which are required to be done in this aspect must be done by the concerned authorities.

16. The petitions are disposed of accordingly.

August 7, 2000 (B.C. Patel, J.)

(P.B. Majmudar, J.)

(apj)